Makro Self-Service Wholesale Corporation *and* United Food and Commercial Workers Union, Local 400, AFL-CIO. Cases 5-CA-13778 and 5-RC-11585

March 24, 1983

DECISION, ORDER, AND DIRECTION OF SECOND ELECTION

BY MEMBERS JENKINS, ZIMMERMAN, AND HUNTER

On October 8, 1982, Administrative Law Judge Robert A. Giannasi issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief, and the Charging Party filed a brief in answer to Respondent's exceptions.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,[1] and conclusions of the Administrative Law Judge and to adopt his recommended Order as modified herein.

The Administrative Law Judge concluded that Respondent violated Section 8(a)(1) by, *inter alia*, interrogating employee Gardner and threatening her with reprisal for engaging in union activities. We find merit in Respondent's exceptions to the Administrative Law Judge's conclusion for the reasons set forth below.

The essential facts are undisputed. Gardner was scheduled to be one of the Union's observers at the Board-conducted election at Respondent's facility on September 11 and 12, 1981. On September 11, she attended the preelection conference which preceded the opening of the polls at 11:30 a.m., and she served as an observer until the polls closed at 4:30 p.m. As a result of her observer duties, Gardner did not report for work at her normal reporting time of 1 p.m. At the end of the voting session, Gardner went to her supervisor, Pugh, to pick up her paycheck. Pugh asked Gardner if she knew "what she had done" and further asked why she had not called in. Gardner responded that she wanted to have the experience of being an observer and that the Union was supposed to have taken care of calling in for her. Pugh then told Gardner that she was "foolish" to take the Union's word and not call in and that she "might hear something on Monday." He also told her that she "had a good chance of losing [her] job." When Gardner left the building, she related Pugh's remarks to the employees and the union representatives who were waiting outside. Meanwhile, Pugh went to Respondent's personnel manager, Brown, for advice on what to do about Gardner's failure to call in. Brown, who testified without contradiction that he, but not Pugh, had known Gardner was going to be an observer, told Pugh that there was a "mixup" and that there was no need to pursue the matter further. The next day, Gardner served as the Union's observer at the second voting session, and Pugh called Gardner at home to apologize for having upset her the day before.

The Administrative Law Judge found that the "clear implication" of Pugh's remarks to Gardner following the first voting session was that Pugh was upset with Gardner for having acted as the Union's observer. He found that Pugh's questioning of Gardner had no lawful purpose since there was "no possible need" for Gardner to have called in to report her absence given the fact that "Respondent clearly knew" she was going to act as an observer that day. Further finding that Pugh's apology on September 12 confirmed the coercive effect of his remarks the day before, the Administrative Law Judge concluded that Pugh's conduct amounted to unlawful interrogation as well as a threat of reprisal for engaging in union activities.

We disagree with the Administrative Law Judge's finding that Pugh's questioning of Gardner had no lawful purpose. Although it is clear that Respondent's higher officials knew that Gardner was scheduled to be an observer for the Union, the record indicates that Pugh, a first-line supervisor, had no such knowledge. Thus, it appears that Pugh did not know where Gardner had been that day but knew only that Gardner did not report for work or call in to report her absence as required by company rules. In these circumstances, we find that Pugh's questioning of Gardner is explainable by, and is consistent with, his normal supervisory responsibilities for an employee who has failed to call in an absence from work. Moreover, we note that it was Gardner who first mentioned the Union in their conversation, and that Pugh's mention of the Union was merely in response to Gardner's statement that she had relied on the Union to call in for her. Nor can we agree with the Administrative Law Judge's conclusion that Pugh's subsequent remarks to Gardner amounted to a threat of reprisal for her acting as the Union's observer. In

[1] Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

this regard, it is evident that Pugh's comments about what Gardner "might hear . . . on Monday" were directed not at her activities on behalf of the Union but rather at her failure to call in. Thus, unlike the Administrative Law Judge, we cannot conclude that the clear implication of these remarks was unlawful. Under all of the circumstances, we conclude that Pugh's comments did not reasonably tend to coerce Gardner and that, therefore, Respondent did not violate Section 8(a)(1) by interrogating or threatening Gardner. We shall modify the Administrative Law Judge's recommended Order accordingly.[2]

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified below, and hereby orders that the Respondent, Makro Self-Service Wholesale Corporation, Capitol Heights, Maryland, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, as so modified:

1. Substitute the following for paragraph 1(a):

"(a) Coercively interrogating employees about their union activities and creating the impression of surveillance of their union activities."

2. Substitute the attached notice for that of the Administrative Law Judge.

IT IS FURTHER ORDERED that the election conducted on September 11 and 12, 1981, in Case 5-RC-11585 be, and it hereby is, set aside and this case is hereby remanded to the Regional Director for Region 5 for the purpose of conducting a second election at such time as he deems the circumstances permit a free choice on the issue of representation.

[Direction of Second Election and *Excelsior* footnote omitted from publication.]

[2] Accordingly, we also do not find that such conduct interfered with employee free choice in the election. We nevertheless conclude that the remaining unfair labor practices found herein are sufficient to warranting setting aside the election.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

WE WILL NOT coercively interrogate employees about their union activities and create the impression of surveillance of their union activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of their Section 7 rights.

MAKRO SELF-SERVICE WHOLESALE CORPORATION

DECISION

STATEMENT OF THE CASE

ROBERT A. GIANNASI, Administrative Law Judge: This consolidated case was heard on July 8, 1982, in Washinqton, D.C. The complaint in Case 5-CA-13778 alleqes that Makro Self-Service Wholesale Corporation (Respondent) violated Section 8(a)(1) of the Act by various acts of coercion. The alleged violations took place durinq a campaign in which the United Food and Commercial Workers Union, Local 400, AFL-CIO (the Union or the Charging Party), sought to obtain representation rights for Respondent's employees. An election conducted by the Board was held on September 11 and 12, 1981. The Charging Party lost the election, but filed objections to that election. On March 30, 1982, the Regional Director for Region 5 issued a Report on Objections in Case 5-RC-11585. He ordered that a hearing be held on some of the objections and also ordered that the case be consolidated with Case 5-CA-13778. The election objection issues which remain to be resolved parallel those in the unfair labor practice case. I have received and reviewed briefs from the General Counsel, Respondent, and the Charging Party.

Upon the entire record, including the testimony of the witnesses and my observation of their demeanor, I hereby make the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Respondent, an Ohio corporation, is engaged in the wholesale of food and nonfood products and operates a place of business in Capitol Heights, Maryland, the site of the instant dispute. During a representative 1-year period, Respondent has, in the course of its business operations, purchased and received, at its Capitol Heights facility, products, goods, and materials valued in excess of $50,000 directly from points outside the State of Maryland. Accordingly, I find, as Respondent admits, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION

The Charging Party (hereafter the Union) is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICE ALLEGATIONS

Respondent opened its Capitol Heights facility in January 1981. At that time the Union began a campaign to organize Respondent's employees. By letter dated June 17, 1981, the Union demanded recognition as the employees' bargaining representative. Respondent declined to grant recognition, and on July 15, 1981, the Union filed a petition with the Labor Board for an election. The election was held on September 11 and 12, 1981. The objections and unfair labor practices allegations are discussed below.

A. *Impression of Surveillance*

Sometime in August, the day after a union meeting at which employee Michelle Harris had complained about problems in her department, she was approached by Food Floor Manager Robert Maddocks. According to Harris, Maddocks grabbed her by the back of the neck "in a joking way" and stated that he heard that she was "mouthing off at the union meeting last night." He also asked whether Respondent was treating her "right." Harris did not respond. Maddocks testified that the confrontation lasted for about 15 or 20 seconds. According to Maddocks, he "accidently bumped into" Harris. He noticed she looked upset and asked why. Harris said, "I got blamed for this housekeeping situation today, and I am very unhappy about it and so forth." Maddocks replied that "this is the first time I have heard of any problems with you on anything like that. You are an excellent employee . . . is there anything I can do for you?" According to Maddocks, Harris replied, "no . . . . It's done." Maddocks testified that he had, earlier that day, instructed the restaurant manager, Larry Donnelly, to clean up a canteen area which, according to Maddocks, was Harris' responsibility to keep clean. Donnelly apparently spoke to Harris about the problem.

I credit the testimony of Harris on this point. She impressed me as a candid witness and her credibility is enhanced by the fact that, at the time of the hearing, she was still an employee of Respondent and testifying against the interests of her employer. Moreover, despite an attempt by counsel for Respondent to show, on cross-examination, that the conversation somehow dealt with the canteen problem, Harris withstood the effort and reaffirmed her testimony on direct that the conversation dealt with the union meeting. She candidly admitted, in response to counsel's question, that Maddocks had told here he was "mad" at her, but insisted that he also told her he heard she was "mouthing off" and asked if Respondent was not "treating [her] right." Maddocks' version of this conversation did not ring true, especially his assertion that he simply meant to calm Harris down because she was upset at being reprimanded for failing to keep the canteen clean. The thrust of his testimony indicated that he himself complained about the canteen problem and that he knew Donnelly had blamed her for it. It is thus unlikely that he would have reacted as he testified and asked Harris if there was "anything I can do for you." I also perceived, in Maddocks' demeanor and his short-form reference to Harris' remarks, i.e., "and so forth" and "no . . . It's done," an effort to attribute to her a manufactured reaction based on an unconnected incident—the canteen problem. This contrasted sharply with Harris' candor and steadfastness.

In these circumstances, I find that Maddocks' remarks to Harris—which were repeated to other employees—created the impression of surveillance. Respondent knew what the employees had been saying at union meetings and made clear that it was concerned about what was said and who said it. Such conduct is violative of Section 8(a)(1) of the Act.

B. *Interrogation by David Bartin*

On a Saturday morning in August, about 2 weeks before the election, Jo Anne Johnson, an employee in the produce department, was confronted by her supervisor, David Bartin. Bartin asked her to "come out to the cooler," which was next to the produce department. She followed him to the cooler. According to Johnson, Bartin asked her "if I was voting for the union." She responded that "that was not for him and I to discuss. He told me that if I voted for the union, I would not be a good person. And I told him I would be a good person whether I did or not." Johnson testified she was "upset" by the conversation and she repeated its contents to two other employees.

Bartin admitted having a conversation with Johnson in the cooler in late August. However, he testified that she came into the cooler while he was there and asked him some questions about the Union. According to Bartin, she asked, "Do you think that if I vote for the union that my salary is going to get cut or I will get laid off?" She also asked him what he thought was going to happen. Bartin replied that he had told her and others about his past experiences with unions and that the decision was up to her. He denied asking her how she was going to vote.

I credit Johnson who impressed me as a reliable and candid witness. Bartin's account is unbelievable. My observation of Johnson's demeanor convinces me that she was not the type of person who would have approached Bartin and questioned him as he testified. Moreover, Bartin's testimony on this point seemed rehearsed.

Based on my credibility determination, I find that Bartin unlawfully interrogated Johnson about her union activities. The context of the questioning demonstrated its coercive effect. Bartin approached Johnson and directed her to an isolated area. Johnson was inhibited from replying to Bartin's question and Bartin followed up his question by indicating his displeasure towards her if she did vote for the Union. Finally, Bartin had no legitimate reason for the interrogation. In this circumstances, the questioning was violative of Section 8(a)(1) of the Act.

C. *Pugh's Coercive Remarks to Gardner during the Election*

Employee Susan Gardner was one of the Union's observers at the Board election which was conducted on Respondent's premises. The first session of the election was conducted on Friday, September 11 from 11:30 a.m. to 4:30 p.m. without interruption. Before the polls opened, a preelection conference was held between representatives of Respondent, the Union, and the Board. Gardner attended the conference. She was scheduled to report to work on Friday at 1 p.m. Because of her responsibilities as an election observer she did not report to work.

According to the uncontradicted testimony of Gardner, the following took place when she went to collect her paycheck from her supervisor, Steve Pugh, after the end of the Friday election session. Pugh gave Gardner her paycheck, then asked "if I knew what I had done. I told him, yes. And he asked me why I didn't call in. I told him the union people [told] me they were going to take care of it. And he thought it was kind of foolish for me to take their word and not to call in, and that I might hear something on Monday." Pugh told Gardner she "had a good chance of losing my job." Gardner told Pugh she decided to be an election observer because she wanted to "have experience doing it."

Gardner was very upset after the conversation. She believed she might lose her job. Gardner was crying as she left the building and approached a number of people, including representatives of the Union and employees.

The next day Gardner went to Respondent's facility and acted as the Union's election observer for the second session of the Board-conducted election.

Pugh's remarks were clearly coercive. His interrogation of Gardner had no lawful purpose and was followed by a threat that she might lose her job. The clear implication was that Pugh was upset with Gardner for having acted as the Union's election observer and it was for this reason that she might lose her job. There was no possible need for her to call in to report her absence when Respondent clearly knew Gardner was acting as an election observer in the most significant activity that day on Respondent's premises. Pugh's conduct not only amounted to coercive interrogation but also an unlawful threat of reprisal for engaging in protected union activity. Such conduct was thus violative of Section 8(a)(1) of the Act.[1]

D. *The Allegation That, in a Speech in Late June, Personnel Manager Lee Brown Threatened Employees with a Reduction of Hours and a Loss of Employment if the Union Were Selected*

The General Counsel's only witness in support of this contention was John Bullock who testified that, in late June 1981, Brown and other unidentified officials of Respondent spoke to assembled employees. He testified that Brown discussed the Union and said, "[i]f the union came in Makro couldn't compete with such places as Safeway, Grand Union and Giant, and that if the union did come in they was going to have to let go some of their part-time workers and would probably have to reduce some of the working hours of some of the full-time workers." Bullock also testified that Brown said the Union wanted to "get in" because they needed dues and that Brown quoted the salaries of some union officials. According to Bullock, Brown also said something about the closing of other stores such as Pantry Pride. Bullock claimed that at least 30 employees were present when the speech was made, but none were called to corroborate him on the contents of the speech.

On cross-examination, Bullock testified that Brown made a slide presentation during the meeting in late June and that Brown had made slide presentations about benefits in previous staff meetings.

Brown testified that he spoke to employees in late March or early April about benefits and that he was present during a slide presentation about benefits in a meeting in late May or early June. He denied that he made any of the statements attributed to him by Bullock. He did testify that in mid or late August he may have made a statement about the salaries of union officials, and that perhaps in a meeting in late August or early September store closings were mentioned. He also candidly admitted telling employees it was his opinion that Respondent did not need a union.

I do not credit Bullock's testimony. His testimony was not entirely clear and he was unable to place the alleged Brown speech in context. Bullock seemed to me to be confusing a number of different campaign themes of Respondent which may have been uttered in different meetings, most likely later in the summer and closer to the date of the election than in the late June meeting he was testifying about. Indeed, his testimony that the meeting included a slide presentation makes it likely that the meeting dealt with benefits, as Brown testified, rather than a serious discussion of the union campaign. Finally, no one else corroborated Bullock even though more than 30 employees supposedly attended the meeting in which coercive remarks were made. In these circumstances, I cannot credit Bullock's testimony. I shall therefore dismiss the allegation in paragraph 5(c) of the complaint.

E. *The Allegation Concerning a Coercive Speech by David Bartin*

Sometime in May 1981, Produce Manager Dave Bartin held a meeting of his department's employees. Bartin told the employees about his experience with unions. According to Michael Golden, Bartin told the employees about a store which went "out of business." He also mentioned "how the Pantry Prides at that time were closing also" and asked if the employees really thought the union would "look for jobs for these people." Bartin also said that Respondent had "a certain budget to work for, certain amount for expenses. He says they are still going to keep the amount for wages. He says, if the

[1] After the Saturday election session, Pugh reached Gardner on the telephone. He told her he was sorry that he upset her. He said nothing about the Union or about her job. Clearly, this conversation did not dissipate the coercive effect of Pugh's remarks. In any event, it took place after the Saturday balloting and could not have ameliorated the coercive impact on Gardner or on voters during the Saturday session. Indeed, Pugh's call confirms the fact that his remarks did have a coercive effect on Gardner and that he realized as much.

union comes in you don't get more money. He says hours will have to be cut and people will have to be let go." Golden testified that there were between 7 and 10 employees at this meeting. No one else testified about the meeting and Golden was not cross-examined on this issue.

Bartin admitted that he spoke to employees in May about his experience with unions. He testified that he had worked for 3 years for Pantry Pride under a union. He further testified as follows:

> The first thing that I covered was the pay raises; that within a time frame immediately following a pay raise that the Company would have a meeting in the back room where a supervisor would come in and say, well, we have got this problem. We have got that problem. We need to get the pay role [sic] down. We have to get some other things like ordering and inventory down. We have to get better gross profits.
>
> And they would tell us, well, we are taking so many hours out of this department, and so many hours out of that department. That was one of the things that I related to them.
>
> Q. I'm sorry. You weren't reading from a prepared text during these meetings, were you?
>
> A. No, sir.
>
> Q. Okay.
>
> A. I didn't have to.
>
> Q. Go ahead.
>
> A. I guess the only other area that I felt real strong about was benefits and the vacations, and the other things such as the canteen. You know I told these people, I said, I have worked in areas where you had a bathroom to eat your lunch. Some of them didn't even have soda machines. We have got a nice place here, nice benefits. The company has made an all out effort to turn around and give you everything that it took us over 17 years to build up.
>
> Q. And because the benefits were so good—how did you relate that to what would happen if the union came in?
>
> A. You have to—. . . .
>
> Q. You had good benefits. Now what was going to happen if the union came in? What did you say would happen if the union came in?
>
> A. What did I say happen?
>
> Q. Yes.
>
> A. I just said that there would be negotiations at that particular time, you know, negotiations would go. If that is what the membership at Makro wanted, the union, the union would come in. They have been voted in. So now at this point in time the union sits down with the company as to what they may want to add or what they want to take away, or keep everything the same. You know I couldn't tell them what they were going to get.
>
> Q. But you told them what had happened at Pantry Pride, and you made clear that that was a union store, did you not?
>
> A. Yes, I did.

The General Counsel alleges that Bartin threatened a reduction in hours if employees selected the Union. I find that the allegation has not been proved by a preponderance of the evidence. First of all, I believe that Bartin did speak to employees about his past experience in a union shop and attempted to give them his views on why things were better without a union. I thought Bartin testified candidly and reliably on this issue. He testified in greater detail about his remarks than did Golden. He also placed his remarks in context whereas Golden's testimony about what Bartin said was conclusionary, particularly the reference to a threatened reduction in hours and work. In context in which the remarks were made, I do not believe that Bartin threatened that Respondent would reduce the hours of employees if the Union were selected as bargaining representative. Accordingly, I shall dismiss paragraph 5(b) of the complaint.

F. *The Allegation that, "on or about April 24, 1981," Personnel Manager Lee Brown Told employees That They Could Not Talk about Nonwork Subjects on Companytime*

Michael Golden was one of the leading union advocates among Respondent's employees. He talked to employees about the Union, passed out union literature, and organized meetings.

Golden testified that on April 2 he was called into Brown's office where Brown told him to restrict his union activities to nonworktime. Later in April, according to Golden, he was again called into Brown's office and told that, "I had been seen by the assistant security manager, Eric Dessert, talking about non-work related materials." Golden responded that he wanted to speak to Dessert about the matter but he was not permitted to have such a meeting. He was given a "verbal warning" at the time. This was apparently the incident which the General Counsel alleges as a violation of the Act.

Brown testified that on April 2 Golden approached him and said he wanted to talk to him. Brown invited Golden into his office. Golden said that he was active in the Union. Brown responded that that was fine, but he also informed Golden about Respondent's lawful no-solicitation policy which restricted worktime solicitation.

Brown denied telling employees that they should not talk about nonwork subjects on companytime. He testified that he sat in on a counseling session involving Golden and his supervisor, Walter Joseph. The subject of the meeting was a complaint that Golden was leaving his work area. Golden was subsequently issued a written warning for leaving his work area without permission. This was dated May 1, 1981. Another "final warning" was issued to Golden on June 12, 1981, for the same offense.

In view of the two written warnings mentioned above, which were introduced into evidence, it is likely that the earlier verbal warning to which both Brown and Golden referred dealt with leaving the work area without permission, as Brown testified. Demonstrating a lack of candor, Golden did not even mention the two written warnings in his testimony. Brown testified that Respondent has a procedure whereby written warnings follow

only after verbal warnings are issued. This supports Brown's version of the April 24 meeting. In these circumstances, I do not credit Golden's testimony and I shall dismiss paragraph 5(a) of the complaint.

G. *The Allegation That Supervisor Eugene Diggs Created the Impression of Surveillance During a Conversation with Golden*

Golden also testified that some time in June he approached Supervisor Eugene Diggs and ask him if it were true, as he had heard, that Diggs was told to keep an eye on him and employee John Bullock. According to Golden, Diggs said that it was true and that Personnel Manager Brown told him to do so but that Diggs had refused to comply. Golden also testified that he confronted Brown with this rumor and that Brown denied that he ever told anyone to "keep an eye on me."

Diggs and Brown denied that Brown ever gave any such instructions to Diggs. Diggs confirmed that Golden approached him about the rumor but he testified that he told Golden, "I didn't know nothing about it and it was not in my style to do anything like that." Diggs placed the conversation in July, the Friday before July 4; Golden placed the conversation some time in June.

Diggs impressed me as a candid and truthful witness. His testimony was not impeached on cross-examination and he more clearly placed the coversation in context than did Golden. In these circumstances, I credit Diggs' account of the conversation and I shall dismiss paragraph 5(d) of the complaint.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES ON THE ELECTION

I have found three separate unfair labor practices. They were committed within the critical preelection period between the filing of the election petition and the election itself. The Board seeks to provide in election proceedings "a laboratory in which an experiment may be conducted, under conditions as nearly ideal as possible, to determine the uninhibited desires of the employees." *General Shoe Corporation*, 77 NLRB 124 (1948). The Board has also held that "[c]onduct violative of Section 8(a)(1) is, *a fortiori*, conduct which interferes with the exercise of a free and untrammeled choice in an election." *Dal-Tex Optical Company, Inc.*, 137 NLRB 1782, 1786 (1962). Thus, the commission of unfair labor practices requires that the election be set aside, unless it is "virtually impossible to conclude that they could have affected the results of the election," *Super Thrift Markets, Inc. t/a Enola Super Thrift*, 233 NLRB 409 (1977). No such determination can be made in this case. There is evidence that the unlawful conduct was transmitted to other employees besides those to whom it was addressed. Moreover, Pugh's coercive interrogation of, and threat to, union election observer Gardner between the balloting sessions was a serious interference with the Board's election process. In these circumstances, I find that Respondent's unfair labor practices did indeed tend to restrain free choice and that the election of September 11 and 12, 1981, must be set aside. See *Greenpark Care Center, etc.*, 236 NLRB 683, 684 (1978).

CONCLUSIONS OF LAW

1. By interrogating employees about their union and other protected activities, by creating the impression of surveillance of union activities, and by threatening an employee with discharge for engaging in union activities, Respondent has violated Section 8(a)(1) of the Act.
2. The above violations constitute unfair labor practices within the meaning of Section 2(6) and (7) of the Act.
3. The above violations, which were also alleged as objections to the election conducted in Case 5-RC-11585, interfered with the election in that case and require that the election be set aside and a new election ordered.
4. Respondent has not otherwise violated the Act.

THE REMEDY

Having found that Respondent engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act, I shall order Respondent to cease and desist therefrom and to take certain affirmative action which will effectuate the policies of the Act. Having found also that Respondent's unfair labor practices interfered with the election of September 11 and 12, 1981, I shall order that the election be set aside and a new election be conducted in Case 5-RC-11585.

Upon the foregoing findings of fact and conclusions of law, I hereby issue the following:

ORDER[2]

The Respondent, Makro Self-Service Wholesale Corporation, Capitol Heights, Maryland, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Coercively interrogating employees about their union activities, creating among employees the impression of surveillance of their union activities, and threatening employees with discharge or other reprisals for engaging in union activities.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of their rights under Section 7 of the Act.

2. Take the following affirmative action which will effectuate the policies of the Act:

(a) Post at its premises in Capitol Heights, Maryland, copies of the attached notice marked "Appendix."[3] Copies of said notices on forms provided by the Regional Director for Region 5, after being duly signed by Respondent's authorized representative, shall be posted by it immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to enployees

[2] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

[3] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by

Continued

are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced or covered by any other material.

(b) Notify the Regional Director for Region 5, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

IT IS FURTHER ORDERED that the representation election conducted on September 11 and 12, 1981, in Case 5-RC-11585 be set aside, and that Case 5-RC-11585 be remanded to the Regional Director for Region 5 for the purpose of conducting a new election at such time as he deems appropriate.

IT IS FURTHER ORDERED that the allegations of the complaint in Case 5-CA-13778 as to which violations were not found are hereby dismissed.